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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,928	08/24/2001	Henri Derk Bijsterbosch	C3890(C)	1577

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UNILEVER
PATENT DEPARTMENT
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EXAMINER	
MRUK, BRIAN P	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/869,928	BIJSTERBOSCH, HENRI DERK	
	Examiner	Art Unit	
	Brian P Mruk	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1-22-02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Objections

3. Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the examiner notes that instant claim 4, from which claim 8 ultimately depends from, already recites the limitations that are required in instant claim 8.

4. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the examiner

notes that instant claim 5, from which claim 9 ultimately depends from, already recites the limitations that are required in instant claim 9.

5. The examiner makes of record that instant claims 1-2 recite a broad range of components followed by a series of narrow ranges with the terms "preferably" and "e.g.". For examination purposes, the examiner asserts that the narrow ranges recited in instant claims 1-2 are merely exemplary ranges, and thus, the prior art will be applied against the broadest ranges recited in instant claims 1-2. Furthermore, the examiner suggests that applicant should delete the narrow ranges from instant claims 1-2, and add new dependent claims that recite the narrow ranges recited in instant claims 1-2.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 1-3 and 6-7 provide for the use of "a modified naturally occurring polysaccharide gum", but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass.

A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-3 and 6-7 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

9. Instant claims 4-5 and 8-9 are rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Leupin et al, U.S. Patent No. 6,384,011.

Leupin et al, U.S. Patent No. 6,384,011, discloses a laundry detergent composition comprising 0.1-5% by weight of a hydrophobically modified cellulose material (see col. 4, line 26-col. 5, line 65), 1-80% by weight of a detersive surfactant, such as a combination of anionic and nonionic surfactants (see col. 6, lines 7-65), 0.1-80% by weight of a builder, such as silicates and aluminosilicates (see col. 7, line 56-col. 8, line 30), perfumes (see col. 8, lines 31-43), and 5-12% by weight of water (see col. 12, lines 25-32), per the requirements of the instant claims. It is further taught by Leupin et al that the composition is used in a method to treat fabrics to impart fabric appearance benefits (see col. 12, lines 59-67). Specifically, note Examples 1-6. Therefore, instant claims 1-9 are anticipated by Leupin et al, U.S. Patent No. 6,384,011.

Double Patenting

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 6,288,022. Although the conflicting claims are not identical, they are not patentably distinct from each other Clark et al, U.S. Patent No. 6,288,022, claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a cellulosic polymer and a surfactant (see claims 1-41 of U.S. Patent No. 6,288,022), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-41 of U.S. Patent No. 6,288,022.

14. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,248,710. Although the conflicting claims are not identical, they are not patentably distinct from each other Bijsterbosch et al, U.S. Patent No. 6,248,710, claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-17 of U.S. Patent No. 6,248,710), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-17 of U.S. Patent No. 6,248,710.

15. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-43 of U.S. Patent No. 6,506,220. Although the conflicting claims are not identical, they are not patentably distinct from each other Clark et al, U.S. Patent No. 6,506,220, claims a similar composition and

method for treating fabrics with a laundry treatment composition comprising a cellulosic polymer and a surfactant (see claims 1-43 of U.S. Patent No. 6,506,220), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-43 of U.S. Patent No. 6,506,220.

16. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,455,489. Although the conflicting claims are not identical, they are not patentably distinct from each other Bijsterbosch et al, U.S. Patent No. 6,455,489, claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-7 of U.S. Patent No. 6,455,489), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-7 of U.S. Patent No. 6,455,489.

17. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,517,588. Although the conflicting claims are not identical, they are not patentably distinct from each other Hopkinson, U.S. Patent No. 6,517,588, claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-10 of U.S. Patent No. 6,517,588), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-10 of U.S. Patent No. 6,517,588.

18. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,358,903. Although the conflicting claims are not identical, they are not patentably distinct from each other Hopkinson et al, U.S. Patent No. 6,358,903, claims a similar composition for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-8 of U.S. Patent No. 6,358,903), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-8 of U.S. Patent No. 6,358,903.

19. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,562,771. Although the conflicting claims are not identical, they are not patentably distinct from each other Finch et al, U.S. Patent No. 6,562,771, claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-14 of U.S. Patent No. 6,562,771), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-14 of U.S. Patent No. 6,562,771.

20. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,475,980. Although the conflicting claims are not identical, they are not patentably distinct from

each other Bijsterbosch et al, U.S. Patent No. 6,475,980, claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-18 of U.S. Patent No. 6,475,980), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-18 of U.S. Patent No. 6,475,980.

21. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/239,967. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/239,967 claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-17 of copending Application No. 10/239,967), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-17 of copending Application No. 10/239,967.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

22. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/225,863. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No.

10/225,863 claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-21 of copending Application No. 10/225,863), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-21 of copending Application No. 10/225,863.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

23. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/225,864. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/225,864 claims a similar composition and method for treating fabrics with a laundry treatment composition comprising a $Beta_{1-4}$ polysaccharide and a surfactant (see claims 1-31 of copending Application No. 10/225,864), as required in instant claims 1-9. Therefore, instant claims 1-9 are an obvious formulation in view of claims 1-31 of copending Application No. 10/225,864.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

24. The examiner notes that the references cited in the International Search Report as "X" references are cumulative to the art rejections of record, and thus, have not been applied in this Office action in accordance with **MPEP 706.02.**

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk
March 10, 2004

Brian P. Mruk

Brian P. Mruk
Primary Examiner
Tech Center 1700